

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

BARRY HARRIS,

Plaintiff,

v.

WILLIAM GITTERE, et al.,

Defendants.

Case No. 3:22-cv-00042-ART-CSD

ORDER

*Pro se* Plaintiff Barry Harris brings this action under 42 U.S.C. § 1983 against Defendants William Gittere, Amber Bodenheimer<sup>1</sup>, and William Reubart for their allegedly unconstitutional behavior. Before the Court is Plaintiff's motion for a preliminary injunction and temporary restraining order. (ECF Nos. 30, 31.)<sup>2</sup> Defendants filed responsive briefs (ECF Nos. 32, 33), and Plaintiff filed a reply. (ECF No. 35.)

United States Magistrate Judge Craig S. Denney has issued a Report and Recommendation ("R&R") (ECF No. 38) recommending denial of Plaintiff's motion. Plaintiff filed an objection to that R&R. (ECF No. 41.) For the reasons identified below, the Court overrules Plaintiff's objections, adopts the R&R in full, and denies Plaintiff's motions for a preliminary injunction and temporary restraining order (ECF Nos. 30, 31.)

### **I. Background**

The Court screened Plaintiff's Second Amended Complaint (ECF No. 8) and

<sup>1</sup> Plaintiff's claims were originally filed against Correctional Officer "Bowdimer." Subsequent filings by Defendants as well as the docket indicate that the true name of this Defendant is Amber Bodenheimer.

<sup>2</sup> These documents are identical but docketed separately due to the differing relief sought.

1 allowed him to proceed with his Eighth Amendment, Fourteenth Amendment,  
 2 and retaliation claims against Defendants Gittere, Reubart, and Bodenheimer.  
 3 (ECF No. 10.) Subsequently, Plaintiff filed a motion for a preliminary injunction  
 4 and temporary restraining order. (ECF Nos. 30, 31). Plaintiff moves for an order  
 5 requiring Defendants to provide him with one hour, three days a week, to review  
 6 Defendant's initial disclosures, evidence, and documents that he is not permitted  
 7 to have in his cell, and requiring that he be provided with adequate space, time,  
 8 and Lexis Nexis capabilities to do research and take notes in his defense. (ECF  
 9 Nos 30, 31.)

## 10 **II. Legal Standard**

### 11 **A. Preliminary Injunction and Temporary Restraining Order**

12 In order for a court to have the power to grant a preliminary injunction or  
 13 temporary restraining order, "there must be a relationship between the injury  
 14 claimed in the motion for injunctive relief and the conduct asserted in the  
 15 underlying complaint." *Pacific Radiation Oncology, LLC v. Queen's Medical Center*,  
 16 810 F.3d 631, 636 (9th Cir. 2015). "The relationship between the preliminary  
 17 injunction and the underlying complaint is sufficiently strong where the  
 18 preliminary injunction would grant 'relief of the same character as that which  
 19 may be granted finally.'" *Id.* (quoting *De Beers Consol. Mines v. United States*, 325  
 20 U.S. 212, 220 (1945)).

### 21 **A. Review of Reports and Recommendations**

22 Under the Federal Magistrates Act, a court "may accept, reject, or modify,  
 23 in whole or in part, the findings or recommendations made by [a] magistrate  
 24 judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's  
 25 report and recommendation, then the court is required to "make a *de*  
 26 *novo* determination of those portions of the [report and recommendation] to which  
 27 objection is made." 28 U.S.C. § 636(b)(1). A court is not required to conduct "any  
 28 review at all . . . of any issue that is not the subject of an objection." *Thomas v.*

1 *Arm*, 474 U.S. 140, 149 (1985).

### 2 **III. Discussion**

3 Plaintiff objects to Judge Denney's R&R on the basis that (1) he did not  
4 consent to a magistrate judge, and (2) that the magistrate judge refused to  
5 address his equal protection claim. (ECF No. 41 at 1-2.)

#### 6 **A. Consent to Magistrate Judge**

7 Under 28 U.S.C. § 636(b)(1)(B), a federal district judge may designate a  
8 magistrate judge to submit to the court proposed findings of fact and  
9 recommendations for disposition of a motion by an individual in prison  
10 challenging the conditions of their confinement. 28 U.S.C. § 636(b)(1)(B). Any  
11 party may then serve and file written objections to the magistrate judge's  
12 recommendation. 28 U.S.C. § 636(b)(1). The district judge may then accept, reject,  
13 or modify the recommendations of the magistrate judge. *Id.* The district judge  
14 thus decides whether to grant case-ending (dispositive) motions and would  
15 preside over any trial. This process does not require consent of the parties. This  
16 action was referred to Judge Denney pursuant to 28 U.S.C. § 636(b)(1)(B). Thus,  
17 Plaintiff's objection on the basis that he did not consent to a magistrate judge is  
18 overruled.

#### 19 **B. Equal Protection Claim**

20 In considering a motion for injunctive relief, Judge Denney was required to  
21 consider whether Plaintiff met the standard for a preliminary injunction or  
22 temporary restraining order. Granting a preliminary injunction or temporary  
23 restraining order requires that there be a nexus between the injury claimed in  
24 the motion for injunctive relief and the conduct asserted in the underlying  
25 complaint. *See Pacific Radiation Oncology, LLC v. Queen's Medical Center*, 810  
26 F.3d 631, 636 (9th Cir. 2015). (quoting *De Beers Consol. Mines v. United States*,  
27 325 U.S. 212, 220 (1945)).

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1 Magistrate Judge Denney's order considered whether there was a  
2 relationship between the injury Plaintiff claimed in his underlying complaint  
3 (here, his Eighth Amendment, Fourteenth Amendment equal protection, and  
4 retaliation claims), and the relief requested in his motion for a preliminary  
5 injunction or temporary restraining order (time to review Defendant's initial  
6 disclosures, evidence, and documents not permitted to have in Plaintiff's cell, and  
7 adequate space, time, and Lexis Nexis capabilities to do research and take notes  
8 in his defense). (ECF Nos. 30, 31.) In doing so, Magistrate Judge Denney's order  
9 found that "Plaintiff's ability to access and review legal documents related to an  
10 ongoing criminal case certainly has no nexus to the Eighth Amendment mental  
11 health, equal protection, and retaliation claims proceeding in this action." (ECF  
12 No. 38 at 3.) Accordingly, Judge Denney did not fail to address Plaintiff's equal  
13 protection claim in his recommendation that Plaintiff's motion be denied.

14 Additionally, upon review of Judge Denney's analysis, the Court agrees  
15 with the conclusion that there is no nexus between the injury claimed and the  
16 relief requested. *See Picozzi v. Nevada*, No. 2:22-CV-01011-ART-EJY, 2024 WL  
17 3570861, at \*3 (D. Nev. July 26, 2024) (finding no nexus between plaintiff's  
18 claims relating to medical care and the relief requested related to retaliation);  
19 *King v. Calderin*, No. 221-CV-01452-CDS-BNW, 2023 WL 375986, at \*2 (D. Nev.  
20 Jan. 24, 2023) (finding no nexus between plaintiff's claims under the First  
21 Amendment, Fourteenth Amendment, and RLUIPA, and his request for relief  
22 related to retaliation, assault, and battery).

23 The Court thus adopts Judge Denney's report and recommendation as to  
24 this motion.

25 If Plaintiff believes he faces new violations of his rights, he must grieve his  
26 concerns, exhaust his administrative rights, and may then initiate a new action.

27 As noted in Judge Denney's R&R, these are also matters that may be raised  
28 through a discovery motion after engaging in a meet and confer, pursuant to the

1 requirements set forth in Local Rules 26-6 and LR IA 1-3(f). The Court generally  
2 will not interfere with matters of prison administration, including the review of  
3 such matters, unless the inmate specifically demonstrates in connection with a  
4 discovery motion that he is not being given an adequate time to review relevant  
5 materials.

6 **IV. Conclusion**

7 It is therefore ordered that Plaintiff's objections to Judge Denney's Report  
8 and Recommendation (ECF No. 41) are OVERRULED.

9 It is further ordered that Judge Denney's Report and Recommendation  
10 recommending denial of Plaintiff's motions for a preliminary injunction and  
11 temporary restraining order (ECF No. 38) is ACCEPTED and ADOPTED.

12 It is further ordered that Plaintiff's motions for a preliminary injunction  
13 and temporary restraining order (ECF Nos. 30, 31) are DENIED.

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15 Dated this 24<sup>th</sup> day of September, 2024.

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18 ANNE R. TRAUM  
19 UNITED STATES DISTRICT JUDGE  
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